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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 966

CHARLES JOBIN,

Appellant,

vs.

THE STATE OF ARIZONA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ARIZONA.

STATEMENT AS TO JURISDICTION.

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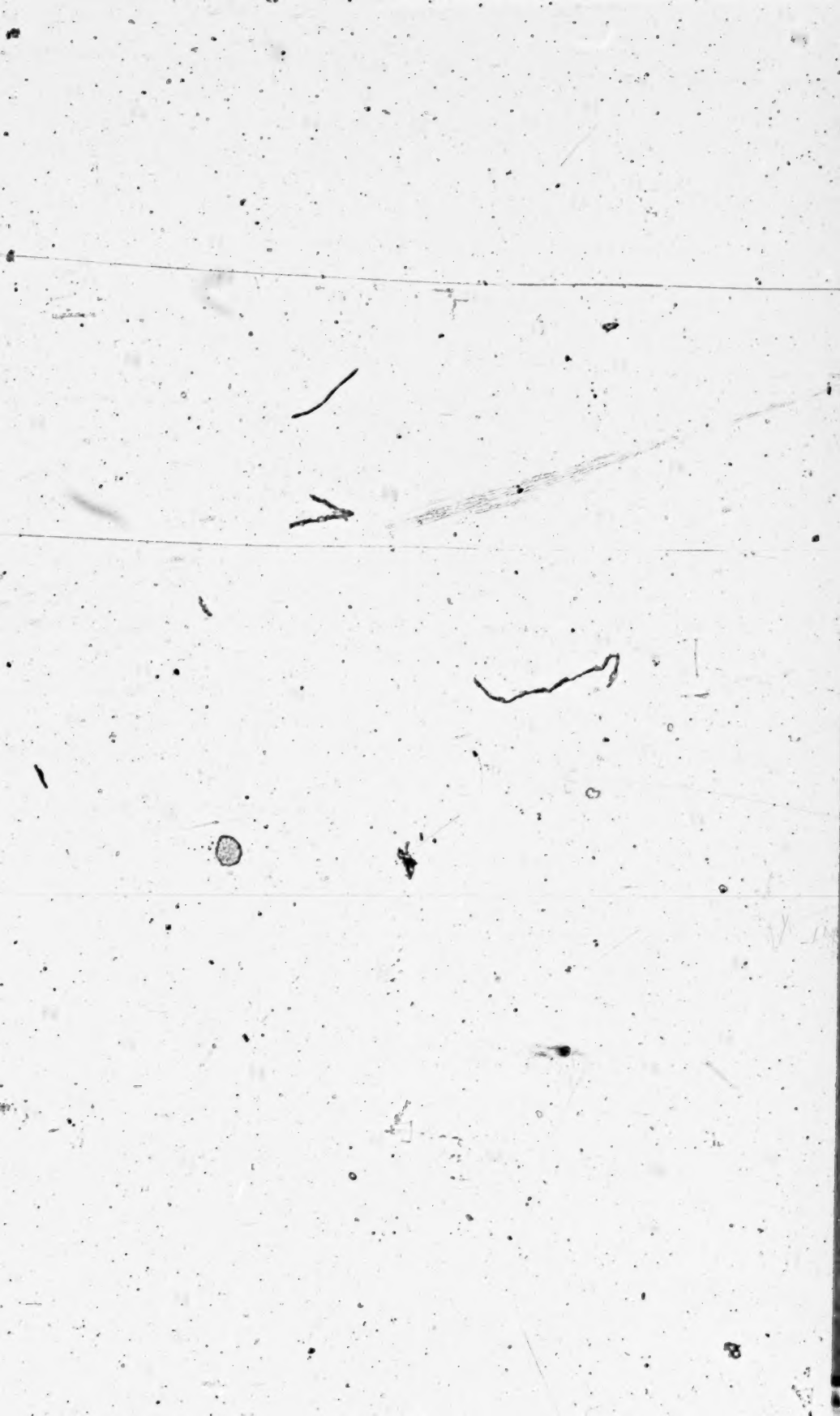

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JURISDICTIONAL STATEMENT.

In compliance with rule 12 (1) of the Supreme Court of the United States of America, appellant files this his statement disclosing the basis upon which he contends that the Supreme Court has jurisdiction upon appeal to review the judgment in question.

Statutory Provisions Sustaining Jurisdiction.

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code [28 U. S. C. 344 (a)].

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in

any case which under prior statute could be received as a matter of right on writ of error.

Arizona Legislation Drawn in Question.

The legislation, constitutionality and validity of which as construed and applied to appellant is here drawn in question, is an ordinance of the City of Casa Grande, known as ordinance number 101. Said ordinance reads as follows:

> "Section 1. It shall be unlawful for any person * * * to carry on any trade, calling, profession, occupation or business in this ordinance specified, without first having procured a license from the City of Casa Grande so to do, or complying with any and all regulations of such trade, profession, occupation or business mentioned in this ordinance * * * and each day or fractional part of a day that any trade, business, profession or occupation in this ordinance specified is conducted or carried on without such license shall be a misdemeanor. * * *
>
> "Section 2. As used in this ordinance the term 'peddler' shall include solicitors and other vendors not having a permanent place of business in the City of Casa Grande. * * * All persons coming within the definition of the occupations defined herein shall pay a quarterly license fee of twenty-five dollars ($25.00) in advance."

(See Record, page —.) The entire ordinance appears in the record at pages —.

The Arizona Supreme Court and the courts below held that the ordinance was not unconstitutional and that it did not deprive appellant of his right of freedom to worship ALMIGHTY GOD, freedom of speech and freedom of press, contrary to Section 1, Fourteenth Amendment to the United States Constitution. Said courts also held that the ordinance was not unreasonable, arbitrary, discriminatory, and was not in excess of the police power of the city. Accordingly, that court of last resort of the State of Arizona

sustained the application of the ordinance to appellant and decided in favor of validity of said ordinance and held it to be constitutional on its face and as construed and applied.

Timeliness.

The judgment of the Supreme Court of Arizona was rendered and entered on October 20, 1941 (R. —). The opinion of that court was delivered on the same date and appears in the record at pages —. The opinion is reported in 118 P. 2d 97, and is not yet officially reported. Within the time and manner allowed by law and the rules of the Supreme Court of the United States, appellant filed his motion for rehearing, which said motion was duly considered by the Supreme Court of Arizona. Thereafter on the 11th day of December, 1941, the Supreme Court of Arizona rendered and entered its order denying appellant's motion for rehearing (R. —); thereby the judgment became final on December 11, 1941, the date of the order overruling the motion for rehearing.

The petition for appeal is duly filed and presented within three months from December 11, 1941, and is therefore timely.

Statement of Nature of Case and Rulings of the Court.

The facts in this case are simple and undisputed. Appellant is a regularly ordained minister of the denomination commonly known as Jehovah's witnesses. On August 15, 1940 he was going from house to house in the City of Casa Grande preaching the gospel, as he understood it, by means of his spoken word, by playing various Biblical records on a phonograph, with approval of the householder, and by distributing printed books, pamphlets and leaflets which set forth his views as to the meaning of the Bible prophecies. The method of distribution of these printed

books, pamphlets and leaflets was as follows: At conclusion of the playing of a phonograph record, appellant would invite the householder to receive one or more of the books or pamphlets and to contribute a small sum to aid in printing and distributing more like literature. Whenever a householder did not desire to receive a book or booklet he left a small leaflet summarizing some points of the Bible message which he preached. In at least two cases he delivered a copy of one of the printed books and received from each of the householders a contribution of twenty-five cents. Appellant admitted that he was offering and delivering said literature in like manner regularly in the City of Casa Grande and elsewhere, and also that in some cases when householders were not in position to make a money contribution and desired and promised to read the literature carefully, to such persons he gave a book or a pamphlet free of charge. Appellant also testified that he did this work because he believed it was his God-given duty to do so. He admitted that not only had he not applied for a license under the ordinance above set forth, but that when the city marshal told him that he was violating the ordinance, he insisted that he had a right to do the work and refused to purchase a license. On behalf of appellant it was contended that he could not be compelled to take out a license as a condition precedent to performing such work in the manner above described because (a) it violated his right of freedom of press, and (b) his freedom to worship Almighty God, as guaranteed to him by the Federal Constitution.

Appellant, one of Jehovah's witnesses, is an ordained minister of Almighty God, preaching the gospel of the Kingdom of Jehovah God, The Theocracy, and as such he is consecrated to bear public witness thereto. At the time of his arrest he was preaching the gospel of God's Kingdom from house to house (Acts 20:20), following in the foot-

steps of Christ Jesus and His apostles (1 Peter 2:9, 21), by distributing Biblical literature in the manner above described. Appellant's sole purpose and objective in thus distributing said literature was to preach said gospel message and thus to provide to others information contained in said literature. His objective was not a commercial one; he was not doing the work for pecuniary gain for himself or for the publishing organization that provided said literature for him to circulate. His inviting and accepting money contributions from willing recipients of the literature was definitely *incidental* to appellant's primary aim and purpose.

The aforesaid literature thus distributed by appellant and by all other of Jehovah's witnesses relates exclusively to Biblical matters, explaining God-given prophecies recorded centuries ago in Holy Writ and which are now being fulfilled, and showing how, according to the Bible, the time is near when JEHOVAH, the Almighty God, will completely destroy His chief enemy, Satan, and also Satan's entire organization invisible and visible consisting of commercial, political and ecclesiastical elements, in the "battle of that great day of God Almighty" at Armageddon (Revelation 16:13-16); which destructive ACT OF GOD shall be immediately followed by continuing growth and irresistible expansion of His Theocratic Government which alone shall prevail eternally in all the universe, to bring peace, joy, prosperity, happiness and endless life to all persons on earth who survive that most terrible battle of all time, and eventually also to many who have died in centuries past and who shall by the power of Almighty God be raised from the dead to live upon earth. Contents of said publications are, in part, admittedly, a vigorous attack upon religion as practiced today and at all time since man has been upon earth, but ALSO such contents clearly set forth the *true distinction* between all religion, on the one

hand, and, on the other hand, the true worship (or service) of Almighty God, thereby exposing religion as a snare to be shunned by the upright, and proving that *no* religion is in any way related to or a necessary part of the true worship of Almighty God and His King Christ Jesus. That no part of the contents of such literature advocates overthrow of government by force or violence or by unlawful means, and does not in any way interfere with the governments of various nations of earth.

The public method of preaching the gospel employed by appellant is following exactly in the footsteps of the Lord Jesus Christ, who also taught *publicly* and from house to house.—Luke 8:1; Acts 20:20.

The undisputed evidence showed that appellant is not a peddler of goods, wares or merchandise in the sense ordinarily understood or intended by the terms of the ordinance, because he is an ordained minister of Jehovah God, preaching the gospel from house to house as well as on the public ways.

The above facts are undisputedly established in the trial court, and the Arizona Supreme Court so found. (R. —).

Appellant was arrested and charged in the municipal court with violation of the aforesaid ordinance, and on trial was convicted for a violation thereof. He duly appealed his case to the Superior Court of Pinal County, Arizona (R. —). In due time his said case was tried *de novo* to a jury before Levi S. Udall, Judge of the Superior Court, resulting in a verdict of guilty and assessment of a fine, in default of which he was ordered to jail and thereupon duly and timely appealed said conviction to the Supreme Court of Arizona. Errors pertaining to his conviction were duly assigned in the Supreme Court of Arizona, according to the rules of said court, and the matter was duly and regularly heard, and on October 20, 1941 the judgment of the Superior Court of Pinal County was affirmed (R. —).

Thereafter appellant's motion for rehearing was overruled on December 11, 1941.

Federal Questions Presented.

In the municipal court, by motion to dismiss (R. —), and in the Superior Court by motion to dismiss and motion for instructed verdict filed at the close of all the evidence (R. —), and by motion for new trial (R. —), and in the Supreme Court of Arizona by assignments of error and brief, appellant duly and timely raised in the manner required by law certain Federal questions, contending in each of said motions that the ordinance in question as construed and applied deprived him of his rights of freedom to worship ALMIGHTY GOD as by Him commanded in His written Word and according to dictates of appellant's conscience, and of freedom of speech and freedom of press, contrary to the "due process" clause of the Fourteenth Amendment to the United States Constitution.

Each of these contentions was overruled by the municipal court, by the Superior Court, and by the Arizona Supreme Court. The Supreme Court of Arizona finally passed upon each of said Federal questions or assignments of error attacking the validity of the ordinance and held the legislation valid and constitutional as construed and applied (R. —). Each of the aforesaid grounds presenting Federal questions has been brought to this Court by specific assignments of error contained in the petition for appeal duly and timely filed herewith.

Grounds and Decisions Sustaining Appellate Jurisdiction of the United States Supreme Court and Showing Federal Questions.

APPELLANT'S CONTENTIONS.

1. The ordinance of the City of Casa Grande, as construed and applied to appellant, is unconstitutional and void, in

that it unreasonably and unlawfully deprives appellant of his right of freedom of press and freedom of speech, contrary to Section One of the Fourteenth Amendment to the United States Constitution.

2. The ordinance of the City of Casa Grande, as construed and applied to appellant, is unconstitutional and void in that it unreasonably and unlawfully deprives appellant of his right of freedom to worship Almighty God, Jehovah, as by Him commanded in His written Word and according to dictates of appellant's conscience, contrary to Section One of the Fourteenth Amendment to the United States Constitution.

Discussion of Ordinance in Question and of Opinion of the Court Below.

It is to be noticed that in the opinion by Chief Justice Lockwood of the court below he refers to the fact that appellant contends that the ordinance is void because it deprives appellant of his right of freedom of speech. While this is true, it should be noticed that in the record appellant also contended that the ordinance deprived him of his right of *freedom of the press*. Repeated use of the term "freedom of speech" in the opinion without reference to *freedom of the press* apparently is merely an oversight and was intended by the writer of the opinion to include freedom of *the press*.

A proper and judicial construction of the ordinance in question would necessarily have excluded appellant's activity from the terms thereof, because appellant was admittedly an ordained minister of the gospel, preaching the gospel by distribution of literature and simultaneously receiving money contributions.

The opinion of the court is to the effect that had appellant not received money contributions he would not have

been within terms of the ordinance, and that by reason of "making sale" of literature he was properly constituted a peddler, subject to payment of the license tax provided for "peddling" within the city, and that therefore his constitutional rights of freedom of worship and freedom of press were not denied him in the circumstances of this case.

The liberty of the people to exercise their right of freedom of speech, of press and of worship depends not upon whether money contributions are received to defray the expense of such activity. As to the construction of the ordinance and what activity the word "peddler" does or does not include, this Court is not concerned. The Arizona Supreme Court's interpretation is final in that regard. However, this rule does not enjoin this Court from determining whether the ordinance as construed by the Arizona Supreme Court violates the Federal Constitution.

If it is found that the admitted exercise of freedom of press and of worship is directly and unlawfully burdened by this ordinance, it is the duty of this Court to reverse the judgment of the courts below. *Henderson* v. *New York*, 92 U. S. 219, 237.

The effect of the decision of the court below is to *amend* the Constitution of the United States in a manner contrary to law and reasoning expressed in the opinions of this Court. The Arizona Supreme Court has *grafted* a new theory, entirely foreign to American life, onto constitutional law of the nation—which should be removed and eradicated by this Court before it reaches more devastating consequences. The court below held that the guarantee of freedom of the press does not extend to "sale" of printed information and opinion, *i.e.*, if money was accepted for the literature distributed that such transaction took the matter beyond the reach of the shield of the Federal Constitution's Fourteenth Amendment.

Such erroneous claim means that a person would be entitled to the protection of the constitutional guarantees of freedom of press against ordinances such as this if he *gave away* printed matter, but if he "sold" such matter he would not be entitled to this fundamental personal privilege. The claim is, therefore, *foolish*. Newspapers, magazines and other periodicals are sold daily on the streets and elsewhere in every community of this land. Money is received in exchange. The newspaper industry is a profitable one and many have grown wealthy through it. They are entitled to all the guarantees of freedom of the press, even though they do gain great wealth through it. One who is doing good, such as each petitioner here, by constantly and continuously bringing printed matter on subjects of great importance to the attention of the public through "press activity" is entitled to let those receiving the information aid in keeping the "good work alive and going" by contributing a small sum with which to print more like literature. It is a ridiculous stalemate to hold that one must "go bankrupt" by forced "free" distribution of literature in order to receive the "free press" protection of the Constitution. Such a reprehensible contention, if permitted to stand, means the "death toll" to freedom of press in America. The taking of money contributed by some who accept literature is only *incidental* to the main activity of appellant. It is a means to an end, to wit, further proclamation of the Kingdom message of Almighty God.

Manchester v. *Leiby*, 117 F. (2d) 661, relied on by the Arizona Supreme Court, is not in point and does not govern here, because it concerned only an ordinance requiring "identification" and not a permit or license. That *Manchester* v. *Leiby* opinion is repugnant to the Constitution and applicable opinions by this Court. (See *Herder* v. *Shahadi*, 14 A. (2d) 475, where an identical ordinance was outlawed.) Denial of certiorari (61 S. Ct. 838) does not

mean that this Court approved the reasoning or the holding of the First Circuit Court of Appeals. See *United States* v. *Carver,* 260 U. S. 482, 490.

A minister of the gospel cannot be licensed to perform acts of worship of Almighty God. Furthermore, the ordinance does not mention or contemplate ministers. The constitutional "right" to serve Almighty God cannot be taxed or licensed. It is not a "privilege," but a *right*. As construed, the ordinance licenses acts of worship; that is to say, preaching the gospel by distribution of literature explaining the Bible. To permit such taxing or licensing is authorizing and encouraging an unlawful joinder of "state and church."

The Arizona Supreme Court's straitened view of what constitutes an "ordained minister" and "preaching the gospel" prevents that court from discerning how appellant's acts are safeguarded under the protecting shield of the Federal Constitution against all sorts of encroachment by license, especially when the court below found that appellant was "preaching the gospel as a regularly ordained minister."

That court's straitened view seems to arise from the private opinion of its members that appellant's challenged activity is "commercial" simply because it is unlike commonly recognized practices of religious clergymen.

As long as appellant's practice does not infringe the law of morals or the right of property of others, the judiciary as well as any administrative agency is precluded from invading the field of opinion and practice to say that a given activity is not in fact an act of worship protected under the constitutional shield.

To "preach" means to proclaim a message.

"Preaching the gospel of the kingdom of God" means proclaiming to others the Scriptural truths of and con-

cerning Jehovah God and His kingdom under Christ Jesus, as commanded in the written Word of God.

To be *ordained* thus to minister or serve merely means to be appointed by the proper authority to a position or office to perform duties specifically assigned. Jehovah's witnesses being selected by Almighty God, Jehovah, it follows that JEHOVAH is the authority who appoints, *ordains*, His servant or minister, as it is written at Isaiah 42:1; Isaiah 43:10-12; Isaiah 61:1-3; John 15:16. Those and other Scriptures clearly state the commission of authority given by Almighty God through His Son Christ Jesus to persons on earth who are servants, or ministers, or witnesses, of Jehovah.

Since Jehovah's witnesses operate in a legal and orderly way through their corporate representative the Watchtower Society, they also possess an earthly ordination. To each one who gives evidence that he is fully devoted to Almighty God and His Kingdom in obedience to the God-given commands written in the Bible, that Society issues an identification certificate showing that such person is recognized by Jehovah's witnesses collectively as an ordained minister or servant, of the Lord.

From the foundation of the United States this country has been recognized and declared by this Court to be "a Christian nation". *Holy Trinity Church* v. *United States*, 143 U. S. 457. This means that its people endeavor to follow in the footsteps of Christ Jesus. All followers of Jesus Christ are duty bound to obey the law of Almighty God and to follow in the footsteps of His Son, Christ Jesus. (Psalm 40:8; 1 Peter 2:9, 21) Jesus set the only example to follow when He said: "Go ye into all the world, and preach the gospel to every creature." (Mark 16:15) It is written of Him that He went throughout every city and village teaching and preaching the kingdom of God. (Mark 6:6; Luke 8:1) See also Matthew 10:7, 12-14. Jesus and

His apostles taught publicly.—Acts 20:20; see also Proverbs 1:20, 21.

A minister of Jehovah God, following in the footsteps of Jesus, is a witness for Jehovah God, viz., one of Jehovah's witnesses. "Ye are my witnesses, saith Jehovah, that I am God." Isaiah 43:10-12). Jehovah's witnesses are commanded by Almighty God to preach, as it is written at Isaiah 61:1, 2 to wit:

> "The Spirit of the LORD GOD is upon me; because the LORD hath annointed me to preach good tidings unto the meek; he hath sent me to bind up the broken-hearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound; to proclaim the acceptable year of the LORD, and the day of vengeance of our God; to comfort all that mourn."

Jesus said that He came into the world for only one purpose, namely, to bear witness to the truthful promise of Almighty God to set up His Theocratic Government to rule the entire earth in righteousness. (John 18:37) According to Matthew 24:14 Jesus commands His followers thus: "This gospel of the kingdom shall be preached in all the world for a witness unto all nations; and then shall the end come." Jehovah's witnesses are commanded thus to proclaim His judgments against "Christendom" "publicly and throughout every city until the cities are desolate".—Isaiah 6:11.

To enable appellant thus effectively to preach the gospel from house to house throughout the city he uses pamphlets, magazines and books which contain the Bible message. The content of the pamphlets he distributed has been heretofore described. That literature he employs as a substitute for talking or sermons. It is more effective because it can be and is studied by recipients in the quiet of their homes, at their own convenience. Thus much time of both recipient and preacher is saved and more people are served. Ap-

pellant's taking of the contribution of money given by some is *incidental* or collateral to the primary aim and purpose to disseminate information to benefit every person willing to receive such.

Appellant refused to apply for a license because he regarded himself as sent by Jehovah God to do His work and believes that such application *by him* would be an act of disobedience to Jehovah God that would result in his (appellant's) everlasting destruction at the hand of Almighty God.

God's law and the requirements of the covenant into which He has taken His ministers, such as appellant, are supreme. (Blackstone, *Commentaries*, Chase 3d ed., pp. 5-7) Neither human creatures nor human powers can set aside the requirements of the law of Almighty God, nor prevent the individual conscientiously to obey the God-given mandate. Nor can such prevention be accomplished by mob violence or by laws mischievously framed or misapplied by men. (Cooley, *Constitutional Limitations*, 8th ed., p. 968) When confronted with inconsistent demands of the two, Jehovah's servants adopt the answer He provided, to wit, "We ought to obey God rather than men." (Acts 5:29) They desire life, which comes only from Almighty God to those who are wholly obedient to His law. (Psalm 36:9; John 17:3) "The law of JEHOVAH is perfect, * * * the statutes of JEHOVAH are right, * * * the commandment of JEHOVAH is pure."—Psalm 19:7, 8.

Jehovah's witnesses are ambassadors for Jehovah's Theocratic Government under Christ. (2 Corinthians 5:20; Ephesians 6:20; see also Jeremiah 49:14; Obadiah 1) Hence the State does not have jurisdiction to intervene by application of law or otherwise to encumber, regulate or interfere with the carrying out of their mission as such ambassadors *in the manner* directed by Almighty God Jehovah. Consequently appellant cannot apply for a permit

.or license without violating his conscience and the covenant which binds him to perform the commands of Almighty God. Jehovah says that covenant-breakers are worthy of death. (Romans 1:31, 32) Furthermore, appellant cannot discontinue preaching the gospel as commanded by Almighty God, and he must continue irrespective of persecution, or otherwise suffer everlasting destruction at the hand of the Most High God, whom he has agreed to obey. (Ezekiel 33:8, 9; Acts 3:22, 23; Jeremiah 26) The law of Jehovah never changes. (Malachi 3:6) He saves those who love and serve Him, but all the wicked He will destroy. (Psalm 145:20) Jehovah keeps all His promises. —Isaiah 46:11.

It would be an insult to Almighty God for one of His servants to apply to another human creature for a permit or license to do that which God has commanded His servant to do under pain of everlasting death for refusal or failure so to do.

The court below *privately* interprets Matthew 22:15-21 to mean that an ordained minister of Jehovah God must stultify his conscience by submitting to the licensing of activity specifically commanded to His ministers by Almighty God in His written Word.

By invoking the counsel given by the Lord Jesus Christ (Matthew 22:15-21), the Arizona Supreme Court thereby judicially subjects itself to the entire law and commandments given by Almighty God.

Almighty God's own interpretation does not support the construction given that Scripture by the Arizona Supreme Court. On the contrary, said court's construction thereof conflicts with the interpretation given by Almighty God and with His written law, which is supreme.

> "No external authority is to place itself between the finite and the Infinite when the former is seeking to render the homage that is due, and in a mode which

commends itself to his conscience and judgment as being suitable for him to render, and acceptable to its object."

Constitutional Limitations (Cooley) 8th ed., p. 968.

"* * * Divine Providence * * * hath been pleased at sundry times and in divers manners to discover and enforce its laws by an immediate and direct revelation. The doctrines thus discovered, we call the revealed or divine law, and *they are to be found only in the Holy Scriptures* * * * *no human laws should be suffered to contradict these.*"

Blackstone, *Commentaries* Chase 3d ed., pp. 5-7.

The court below interprets *privately* (i. e., for *its own* purpose rather than for the purpose of the Teacher, Jesus Christ) the language of the Lord Jesus—"Render unto Caesar the things that are Caesar's, and unto God the things which are God's" (Matthew 22:21)—to mean that a servant of Almighty God can be required to violate his conscience and submit to the will of the State by asking for and obtaining a license to perform acts which Almighty God through His written Word *commands* His ministers to do.

Such *private* misinterpretation of God-given instruction is "wresting the Word of God" (2 Peter 3:16); for "no prophecy of the scriptures is of any private interpretation,"—2 Peter 1:20.

True construction of this Scripture (Matthew 22:15-21) by the Lord Jesus Christ Himself is provided in the Sacred Record describing His own conduct when demanded by the authority of Caesar to discontinue preaching of the gospel. He refused the demand and emphatically rebuked His accusers, and as a consequence was put to death for His refusal to violate the law of Almighty God. His apostles, following in the course of Jesus Christ, were similarly commanded to discontinue preaching of the gospel, were mobbed and beaten for refusing to cease preaching, and were haled

into court, charged with "turning the world upside down" (Acts 17:6) and advocating a government the King of which is "one Jesus". (Acts 25) As to Jesus' disciples when before the courts under such charge it is written (Acts 5:17-41) that they openly said, "We ought to obey God rather than men." Thereafter, as it is written concerning them, "daily in the temple, and in *every house*, they *ceased not* to teach and preach Jesus Christ." (Acts 5:42) Thus is shown the true construction to be placed upon Matthew 22:15-21 as it relates to the God-given duties performed by an ordained minister of Almighty God in preaching the gospel.

Furthermore, the Arizona Supreme Court also held that the constitutional shield protecting freedom to worship Almighty God according to the dictates of conscience *does not* extend to include ordained ministers of Almighty God preaching the gospel from house to house when money contributions are accepted by such minister from persons who receive from him the printed gospel message.

The Scriptures that court cites have been misconstrued by its *private* interpretation. The word "freely" as used in those Scriptures means generously, liberally, without stint, abundantly.

The record and the opinion below shows that appellant was generous and liberal while preaching the gospel. Appellant offered the literature to every one whom he visited. From some persons who received literature he accepted money contributions, and as to others, "if the parties did not desire to buy the books but promised to read them carefully, they were given free of charge." (Opinion, Supreme Court of Arizona.) Thus is shown again that appellant's object was not a commercial one, not a purpose to accumulate pecuniary gain, and not a purpose under which the gospel message was held back from any one not able to

contribute money to aid in carrying forward appellant's work of preaching.

Jesus Christ's apostle, Paul, defining the principle of God's law expressed in the Scriptures cited by the court below (Revelation 21:6; Revelation 22:17), said that God's minister has a right to expect and accept contributions from any to whom he provides the gospel message. See 1 Corinthians 9:3-27. This is corroborative of the words of Jesus Christ, who said, "The workman is worthy of his meat [maintenance]."—Matthew 10:10, King James Version, and "Emphatic Diaglott".

To permit or to encourage the application of this type of ordinance to the activity of preaching the gospel is to allow the State to *regulate the church*, which would ultimately permit politicians and others to establish through the State a *State religion*, or through license or taxation to suppress and destroy freedom to worship Almighty God. This would be effected by licensing or taxing the followers of Jesus Christ. Thus the people of America would be pushed back into the miserable condition of intolerance, lethargy and indolence of the dark ages from which founders of this "land of liberty" fled during the reign of King George III. All *tendencies* to accomplish a joinder of "church and state", either directly or indirectly (as attempted here against appellant), should be "nipped in the bud". The sedulous avoidance by America of any move toward joinder of "church and state" is discussed in *The Encyclopedia Americana*, Vol. 6. pp. 660, 657-659; and in the *Columbia Encyclopedia* (Columbia University Press). See *The Catholic Encyclopedia*, Vol. 14 (1912), pp. 250-253.

The Fourteenth Amendment secures to all freedom of the press, against abridgment by the State.

This right and liberty are not confined to printing, but also embrace the right to distribute, to circulate printed informative matter, to disseminate ideas in recorded form.

Liberty of circulation is as essential as liberty to print; indeed, without circulation publication would be of little, if any, value. *Ex parte Jackson*, 96 U. S. 727, 733; *Lovell* v. *City of Griffin*, 303 U. S. 444; *Grosjean* v. *American Press Co.*, 297 U. S. 233.

The undisputed evidence and the findings of all the courts below show that appellant is engaged in activity of "the press".

It is clearly evident that to hold that the constitutional shield protecting freedom of press covers only "free" or *gift* distribution of pamphlets and other printed informative material is to sound the death toll for that most vital of constitutional rights in this country.

In *Commonwealth* [Pa.] v. *Reid et ux.*, 20 A. (2d) 841, the ordinance of the Borough of Clearfield was very similar to that of the City of Casa Grande. After quoting from *Lovell* v. *City of Griffin*, *supra*, President Judge Keller said:

> "The historical reference to 'pamphlets' in that [*Lovell*] opinion and in other opinions of that Court (*Schneider* v. *State* (Town of Irvington), supra, p. 164; *Thornhill* v. *Alabama*, 310 U. S. 88, 97; *Grosjean* v. *American Press Co.*, 297 U. S. 233, 245-250, etc.) is not limited to 'pamphlets' which are distributed without cost. Every student of history knows that the 'pamphlets' referred to by Chief Justice Hughes in his opinion, and by Mr. Justice Sutherland in the *Grosjean* case, were not for the most part circulated *gratis*, but were distributed to subscribers or sold."

Even the First Circuit Court of Appeals that wrote the opinion in the case of *Manchester* v. *Leiby*, *supra*, relied on by the court below in the case at bar, held specifically that freedom of the press is not limited to "free" or gift distribution, saying:

> "* * * We take it also that this constitutional right to make reasonable use of the streets for the pur-

> pose of distributing literature is *not limited to handing it out free of charge*, but *includes also the right to offer the literature for sale* so as to defray the cost of publication—otherwise, the circulation of one's opinions or the propagation of one's faith on an extensive scale would tend to become a prerogative of the well-to-do."
>
> *Hannan et al.* v. *City of Haverhill* (Mass.), 120 F. (2d) 87 (May 29, 1941).

In the case at bar, the license tax provided for, as applied, is not at all different from the tax struck down in the case of *Grosjean* v. *American Press Co.*, 297 U. S. 233. There the tax was based on gross receipts of the newspaper with circulation over 20,000 copies per week. Here the ordinance provides for a license on peddling literature within the city. It also provides, by the court's construction, for license fee for dealers in periodicals and newsstands selling periodicals, and for license tax for agents selling merchandise.

It is a well-known fact (of which this Court will take judicial notice) that the principal method of circulation and distribution of the large newspapers and national periodicals and magazines, weekly and monthly, is by newsboys and men, both on the streets and from house to house throughout the entire nation. This is particularly true with respect to *sale* of magazines such as "Collier's", "The Ladies Home Journal," "The Saturday Evening Post" and "Liberty". This has been the principal means of distribution of pamphlets, especially since their original use and to this day.

While casual consideration might lead one to believe that the ordinance in question is one of the "ordinary forms of taxation for support of the government", yet a more careful consideration thereof conclusively shows that it is adroitly aimed, by construction of the court, at *circulation* and can be misused to utterly destroy distribution of literature containing information and opinion.

A case directly in point, decided November 5, 1941, involving four of Jehovah's witnesses, was prosecuted under an identical license-tax ordinance of the City of Rutland, Vermont. (*State of Vermont* v. *Greaves*, 22 A. (2d) 497.) There the Vermont Supreme Court held that ordinance was a direct burden upon freedom of the press and was identical in effect with the law knocked down in the *Grosjean* case, *supra*.

As our further argument we here adopt in its entirety the opinion of Mr. Justice Sutherland in *Grosjean* v. *American Press Co.*, 297 U. S. 233, 244-251, and also the statement appearing in *Near* v. *Minnesota*, 283 U. S. 697, 707-716 *et seq.*

The ordinance is clearly *not regulatory*. The license tax provided for is not a general taxing law for support of government as contemplated by this Court. The ordinance throws the burden upon the pamphleteer or other distributor of limited means and thus stops circulation. A thousand distributors would be required to pay, annually, $100,000 to function under the ordinance. Under the same ordinance the one printer for the thousand distributors would be required to pay only $100 annually. The unreasonableness of the ordinance license tax is manifest.

The license tax here cannot be distinguished from the type of law requiring a permit from a police chief or other authorized official in whom is vested discretion to grant or refuse the permit. This character of law is admittedly unconstitutional. See *Lovell* v. *Griffin*, 303 U. S. 444, and *Schneider* v. *State*, 308 U. S. 147. The same prohibitive result or evil can be and is reached under the license tax law here through increasing the license fee so as to make it impossible for all, except the ultrarich, to exercise constitutional rights guaranteed to everyone. Thus the right of liberty and freedom secured to all by the Constitution would become the prerogative of the wealthy. Indeed, one

might be too poor to pay even the smallest possible license fee that may be fixed and thus be refused the rights guaranteed him under the Constitution by reason of his property. The exercise of rights so vital to the maintenance of democratic principles is not and cannot be made dependent upon one's ability to raise sufficient funds wherewith to pay a license tax fee as a condition precedent to the exercise thereof. To thus hold might and would deprive large segments of the population of the guarantee of their freedom. The results would be a substantial dissolution of the rights of the people and a serious impairment of equality of the inhabitants of this land, and would make indigence a basis for restricting freedom of civil rights.

The ordinance questioned here permits the people, in the exercise of their constitutional rights, to be divided into two classes; one class with worldly riches free to exercise the right of freedom of press and worship according to the dictates of conscience, and another class that is poverty-stricken to the point of being unable to purchase the required license to exercise those vital rights. Thus the ordinance is at war with the Constitution and is a short-sighted blow at the security of the people's liberties.

Laws which make unlawful the bringing of indigents into a State are unconstitutional and void. See *Edwards* v. *California*, 62 S. Ct. 164, 166-170. The principle announced in that case makes such, by analogy, authority for the appellant here.

The license tax here applied to the exercise of an admitted constitutional right can be likened to the various kinds of taxes that have been knocked down as being unconstitutional burdens upon interstate commerce.

Appellant does not and can not rely upon the interstate commerce clause itself. However, by analogy, appellant's exercise of his rights of "free press" and "worship" is

entitled to *equal protection* against any direct-tax burden, even as the right of "free commerce between the states".

This Court has held to be bad taxes and license fees which are a direct burden against interstate commerce. Such cases, by analogy, show a similar tax, which directly burdens the exercise of freedom of press and worship, and is likewise bad.

This Court has declared in numerous cases that license-tax laws and peddlers' license ordinances similar to the one here involved are unconstitutional when construed and applied to cover peddlers or agents selling from house to house or on the streets merchandise shipped from another State. See *Sabine Robbins* v. *Shelby County Taxing Dist.*, 120 U. S. 489, 494-496; *Caldwell et al.* v. *North Carolina*, 187 U. S. 622, 624-632; *Rearick* v. *Pennsylvania*, 203 U. S. 507, 510-513; *Dozier* v. *Alabama*, 218 U. S. 124, 126-128, and *Real Silk Hosiery Mills* v. *City of Portland et al.*, 268 U. S. 325, 335-336.

In these trying hours this Court will be equally as hasty and astute to protect the rights under the "Bill of Rights" and the Fourteenth Amendment to the Constitution as it is in sustaining the commerce clause, especially when human rights are threatened, as here, with destruction by the direct burdening of circulation and distribution, the very life of "free press."

We submit that the ordinance as construed and applied and also, by express provisions, on its face violates the Fourteenth Amendment by reason of denial and abridgment of freedom of press. The decision of the Arizona Supreme Court is contrary to the following decisions and opinions of other courts, to wit:

Schneider v. *State*, 308 U. S. 147;
Lovell v. *City of Griffin*, 303 U. S. 444;
Cantwell v. *Connecticut*, 310 U. S. 296;

Grosjean v. *American Press Co., supra;*
Donley et al. v. *City of Colorado Springs,* 40 F. Supp. 15;
Cincinnati v. *Mosier,* 22 N. E. (2d) 418;
Zimmermann et al. v. *Village of London* (Ohio), 38 F. Supp. 582;
Thomas v. *Atlanta,* 1 S. E. (2d) 598;
Kennedy et al. v. *City of Moscow* (Idaho), 39 F. Supp. 26;
Hannan et al. v. *City of Haverhill* (Mass.), 120 F. (2d) 87;
Reid et al. v. *Borough of Brookville* (Pa.) *et al.,* 39 F. Supp. 30;
Douglas et al. v. *City of Jeannette* (Pa.), 39 F. Supp. 32;
Commonwealth (Pa.) v. *Reid et ux.,* 20 A. (2d) 841;
State (Fla.) *ex rel. Hough* v. *Woodruff,* 2 So. (2d) 577;
State (Fla.) *ex rel. Wilson et al.* v. *Russell,* 1 So. (2d) 569;
Village of South Holland (Ill.) v. *Stein,* 26 N. E. (2d) 868; 373 Ill. 472;
State (S. Car.) v. *Meredith,* 15 S. E. (2d) 678;
Semansky v. *Stark,* 199 So. 129.

In each of the above cases the identical activity of Jehovah's witnesses was involved and the challenged ordinances and statutes were held to be unconstitutional both on their face and as construed and applied, because unlawfully abridging the right of freedom of press.

This Court can take judicial notice of the clearly reasoned opinion of a humble city magistrate of this nation's largest and *greatest* municipality, involving an identical ordinance. Very early New York City's Magistrate Morris Rothenberg discerned and applied the American principles so ably set forth by Chief Justice Hughes in *Lovell* v. *Griffin, supra.*

In *People* v. *Max Banks* (July 20, 1938), 6 N. Y. S. (2d) 41; Judge Rothenberg said:

"I hold it to be an infringement of the First and Fourteenth Amendments to the Constitution of the United States guaranteeing liberty of the press to require the payment of a license fee for the privilege of *selling* a pamphlet on the public streets and to impose a penalty of fine and imprisonment for violation of the section mentioned.

"In applying the principle laid down in the Grosjean case to the facts in the Lovell case the Chief Justice said:

'The ordinance cannot be saved because it relates to distribution and not to publication. "Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value." * * * The license tax in Grosjean *v.* American Press Company, supra, was held invalid because of its direct tendency to restrict circulation.'

"Following this reasoning it is clear that the imposition of a license fee or tax as a prerequisite to the *sale* of pamphlets on the streets has a direct tendency to restrict circulation, notwithstanding the fact that Article 6 of the Administrative Code [of the City of New York] permits free distribution of literature on the public streets without restriction. Free circulation depends as much and conceivably more upon the sale than upon free distribution, considering the cost involved in the free distribution of literature. Adequate circulation may only be rendered possible through *sale* defraying the cost of production. How effectively a license fee or tax may act as a curtailment upon *sale* and consequently upon circulation the Supreme Court in the Grosjean case said 'becomes plain when we consider that if the tax were increased to a high degree, as it could be, if valid, * * * it well might result in *destroying* circulation.'"

In *People* v. *Finkelstein*, 2 N. Y. S. (2d) 941, also it was held that license tax ordinances of the City of New York very like the license ordinance of the City of Casa Grande were unconstitutional as construed and applied to *sale* of literature.

It seems that the distinguishing feature overlooked by the court below is well expressed by this Court in *Schneider* v. *State*, *supra*, as follows:

> "* * * Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at *other personal activities*, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions."

Conclusion.

For sake of brevity, reference is here made to Petition for Appeal filed in this cause, with which we incorporate, by such reference, each and every assignment of error therein contained and hereby make the same a part hereof to show that substantial questions were presented before the Arizona Supreme Court.

WHEREFORE, the Supreme Court of the United States should note jurisdiction of this cause for final hearing in accordance with the rules of this Court, because the courts below disposed of important Federal questions in a way that is in conflict with applicable decisions of this Court and have so radically and far departed from the Constitution of the United States and the accepted and regular course of the jurisdictional procedure, as to call for this Court's power of supervision to halt the same.

Confidently submitted,

CHARLIE W. CLARK,
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Attorneys for Appellant.

EXHIBIT "A".

IN THE SUPREME COURT OF THE STATE OF ARIZONA.

No. 904.

THE STATE OF ARIZONA, *Appellee*,

vs.

CHARLES JOBIN, *Appellant*.

Appeal from Superior Court of Pinal County; Honorable Levi S. Udall, Judge. Judgment Affirmed.

Joe Conway, Attorney General,; Albert M. Garcia, his Assistant, of Phoenix; Chas. H. Reed, of counsel, of Coolidge, for Appellee.

Charlie W. Clark, of Phoenix, Attorney for Appellant.

LOCKWOOD, C. J.:

This is an appeal by Charles Jobin, called defendant, from a judgment pronounced on him, after a verdict by a jury in the Superior court of Pinal County finding him guilty of a violation of ordinance number 101, of the city of Casa Grande. The provisions of the ordinance which defendant was found guilty of violating read as follows:

"Section 1. It shall be unlawful for any person * * * to carry on any trade, calling, profession, occupation or business in this ordinance specified, without first having procured a license from the City of Casa Grande, so to do, or complying with any and all regulations of such trade, profession, occupation or business mentioned in this ordinance * * * and each day or fractional part of a day that any trade, business, profession or occupation in this ordinance specified is conducted or carried on without such license shall be a misdemeanor. * * *

"Section 2. As used in this ordinance the term 'peddler' shall include solicitors and other vendors not having a permanent place of business in the City of Casa Grande.

* * * All persons coming within the definition of the occupations defined herein shall pay a quarterly license fee of twenty-five dollars ($25.00) in advance."

It was enacted under the provisions of section 16-207, A. C. 1939, which reads so far as material as follows:

"*General powers of common council enumerated.* The common council of such town shall have control of the finances, and of the property of the corporation; and shall likewise have power within the limits of the town:

"20. To license, tax and regulate * * * * peddlers * * *."

The ordinance on its face is the ordinary occupational license tax ordinance for the purpose of raising revenue and is, generally speaking, valid. City of Glendale *v.* Betty, 45 Ariz. 327, 43 Pac. (2d) 206. Nor, indeed, does defendant deny this fact. His contention is that if the ordinance is construed to apply to his actions as they appear in the record, it is unconstitutional and void as being in conflict with the First Amendment to the Constitution of the United States, which reads as follows:

"(Religious and political freedom.) Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

The facts as shown by the evidence and found by the jury may be stated as follows: Defendant is a regularly ordained minister of the denomination commonly known as Jehovah's witnesses, and on August 15, 1940 was going from house to house in the city of Casa Grande preaching the gospel, as he understood it, by means of his spoken word, by playing various religious records on a phonograph, with the approval of the householder, and by distributing printed books, pamphlets and tracts which set forth his views as to the meaning of the Bible. The method of distribution of these printed books, pamphlets and tracts

was as follows: He first offered them for sale at various prices ranging from five to twenty-five cents each. If the householder did not desire to purchase any of them he left a small leaflet summarizing some of the doctrines which he preached. In at least two cases, however, he sold a copy of one of the printed books which he had offered, for twenty-five cents.

Defendant admitted that he was offering these books and pamphlets for sale regularly in the city of Casa Grande and elsewhere, but stated that in some cases, if the parties did not desire to buy the books but promised to read them carefully, they were given free of charge. He also testified that he was doing this because he believed it was his religious duty to do so. He admitted that not only he had not applied for a license to sell the books in question, under the ordinance above set forth, but that when the city marshal told him that he was violating the ordinance, he insisted that he had a right to do so and refused to purchase a license. It is claimed that he could not be compelled to take out a license as preliminary to selling the books and pamphlets in question because (a) it violated his right of free speech [press], and (b) his free exercise of religion, as guaranteed him by the First Amendment, supra.

The first question we consider is whether what he was engaged in doing was peddling, for if it was not he has not violated the ordinance. A peddler has been comprehensively defined as a small retail dealer who carries his merchandise with him, traveling from place to place, or from house to house, exhibiting his or his principal's goods for sale and selling them. Collender *v.* Reardon, 138 App. Div. 738, 123 N. Y. S. 587; Ex parte Hogg, 70 Tex. Cr. 161, 156 S. W. 931. Many other definitions have been given by the cases but they all necessarily include a small retail dealer who carries his merchandise with him and travels from house to house.

It is obvious from the record made that defendant was engaged in business as a peddler, for it is not necessary in order to constitute one such that it should be his sole or principal business. Hays *v.* Commonwealth, 107 Ky. 655, 55 S. W. 425; State *v.* Littlefield, 112 Me. 214, 91 Atl. 945. Nor is it necessary that any considerable number of sales

be shown. Commonwealth *v.* Reid, 175 Mass. 325, 56 N. E. 617, State *v.* Webber, 214 Mo. 272, 113 S. W. 1054.

In the present case not only were two actual sales shown, but defendant stated it was part of his regular business to sell these books and pamphlets. If the books which he sold were dictionaries, works of travel, fiction, or the like there could be no question but that he was engaged in peddling, for instead of taking orders and delivering the books later, he carried them with him and delivered them immediately upon sale. The question then is whether the fact that the books sold, which admittedly contained various arguments and citations supporting the religious belief which he was engaged in promulgating, and which he believed it to be his religious duty to sell, exempts him from the ordinance by reason of the First Amendment to the Federal Constitution, supra.

So far as the right of free speech [press] is concerned, we think the question is definitely settled by the decisions of the supreme court of the United States in Grosjean *v.* American Press Co., 297 U. S. 233, 80 L. Ed. 660, and Giragi *v.* Moore, 48 Ariz. 33, 58 Pac. (2d) 1249, 49 Ariz. 74, 64 Pac. (2d) 819, 301 U. S. 670, 81 L. Ed. 1334. In the Grosjean case the Louisiana statute imposing a license tax for the privilege of engaging in the business of publishing advertising in a newspaper was held *under the circumstances of the case* to constitute a violation of the First Amendment, supra. The court in discussing the matter said:

"* * * The tax here involved is bad not because it takes money from the pockets of the appellees. If that were all, a wholly different question would be presented. It is bad because, *in the light of its history and of its present setting*, it is seen to be a deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public is entitled in virtue of the constitutional guaranties. * * *" [Italics ours]

The state of Arizona has adopted a general sales tax law, and in the case of Giragi *v.* Moore, supra, it was contended that under the doctrine of the Grosjean case the sales tax law was invalid as applied to newspapers. We pointed out

the difference between the facts and background of the Louisiana and the Arizona sales tax as affecting newspapers and that our tax was obviously a general revenue law applied to many other occupations besides newspapers and in no manner an attempt to regulate or limit the publication of a newspaper, and held the law constitutional as not violating the freedom of speech as guaranteed by the First Amendment. The case was appealed to the supreme court of the United States, and on the authority of the very Grosjean case relied upon by defendant herein the appeal was dismissed as not involving a federal question. We think it is obvious to anyone who will read the cases above cited on this point that the general revenue ordinance of the city of Casa Grande imposing a license on peddlers is not unconstitutional as applied to the defendant because it violates the right of free speech [press].

But the point most vigorously urged is that it violates the right of the free exercise of religion. Baldly stated, defendant contends that he has the right to peddle and sell for money any books, papers and pamphlets which uphold and inculcate his particular religious belief, without paying the license required of peddlers of all secular books, merely because he believes it to be his religious duty to do so. The particular denomination to which defendant belongs has been before the courts of the various states and the federal government many times in the last few years, because its members believe they have a right, under the claim of free exercise of religion, to do many things which are prohibited by law and to refrain from doing others which are commanded by law, because their conscience does not approve the law. We have been cited to a number of cases where this denomination was involved. Among those is the case of Lovell *v.* Griffin, 303 U. S. 444, 82 L. Ed. 949. The ordinance in that case, however, prohibited the distribution of literature of any kind at any time, at any place and in any manner, free or otherwise, without a permit from the city manager, and gave the manager discretion in the issuance of the permit. The court held, and we think very properly so, that the ordinance was void as striking at the freedom of the press and free speech. In the present

case the dissimilarity of the two ordinances is obvious. The court instructed the jury as follows:

"* * * The court instructs you as a matter of law that this defendant had a perfect right in the city of Casa Grande or any other place in the State of Arizona to, as long as he did not disturb the peace or trespass, give his views on religious matters. He had a perfect right to distribute free any pamphlets, books, or literature without obtaining from the city of Casa Grande a permit or license to distribute them. The court wants to remind you that in this matter the defendant is accused of having sold these pamphlets, books, etc., without procuring a license or permit so to do. Now if you find from the evidence that he did not sell these books or pamphlets, you should promptly acquit him. On the other hand, if you find he did sell these books and pamphlets without having procured a license so to do, then you should find the defendant guilty."

and it is obvious therefrom, that had defendant, in pursuance of his religious belief, distributed the literature free of charge, the jury, under the instructions of the court, would have acquitted him.

The same question was raised in the case of Cantwell v. Connecticut, 310 U. S. 296, 84 L. Ed. 1213, and the court held the ordinance unconstitutional as applied to Jehovah's witnesses, stating:

"It will be noted, however, that the Act requires an application to the secretary of the public welfare council of the State; that he is empowered to determine whether the cause is a religious one, and that the issue of a certificate depends upon his affirmative action. If he finds that the cause is not that of religion, to solicit for it becomes a crime. He is not to issue a certificate as a matter of course. His decision to issue or refuse it involves appraisal of facts, the exercise of judgment, and the formation of an opinion. He is authorized to withhold his approval if he determines that the cause is not a religious one. Such a censorship of religion as the means of determining its right to survive is a denial of liberty protected

by the First Amendment and included in the liberty which is within the protection of the Fourteenth."

As in Lovell *v.* Griffin, supra, the ordinance objected to left it to the discretion of a public official as to whether the permit should be granted. The right of free speech [press], though not of religious liberty, was also involved in the cases of Schneider *v.* Irvington, 308 U. S. 147, 84 L. Ed. 155, and Hague *v.* Com. for Ind. Organization, 307 U. S. 496, 83 L. Ed. 1423. In these cases the court again held the ordinances in question were void on the ground that the permit to be issued involved the discretion of some public officer, and in Schneider *v.* Irvington, supra, expressly stated:

"* * * The ordinance is not limited to those who canvass for private profit; nor is it merely the common type of ordinance requiring some form of registration or license of hawkers, or peddlers. * * *

"We are not to be taken as holding that commercial soliciting and canvassing may not be subjected to such regulation as the ordinance requires. * * *"

The general question of how far the state may go in adopting rules of conduct which violate the conscience of some individuals is discussed in Hamilton *v.* University of Cal., 293 U. S. 245, 79 L. Ed. 343. The question involved there was the right of a conscientious objector to refuse to take military training and still insist upon the privilege of attending the state university. The court held that the defendants in that case could not refuse to take the training and at the same time claim the privileges of education. Mr. Justice Cardozo, in a specially concurring opinion, said:

"The conscientious objector, if his liberties were to be thus extended, might refuse to contribute taxes in furtherance of a war, whether for attack or for defense, or in furtherance of any other end condemned by his conscience as irreligious or immoral. The right of private judgment has never yet been so exalted above the powers and the compulsion of the agencies of government. One who is a martyr to a principle—which may turn out in the end to

be a delusion or an error—does not prove by his martyrdom that he has kept within the law."

and in this he was joined by Mr. Justice Stone and Mr. Justice Brandeis.

The latest case from the supreme court of the United States in regard to religious liberty is Minersville School Dist. *v.* Gobitis, 310 U. S. 586, 84 L. Ed. 1375. This case involved Jehovah's witnesses. The local rules of the board of education of the public schools required both teachers and pupils to salute the national flag and pledge allegiance thereto as a daily school exercise. The children of Gobitis refused to do this on the ground that it was contrary to the religious belief which they had been taught by their parents, and the court said:

"We must decide whether the requirement of participation in such a ceremony, exacted from a child who refuses upon sincere religious grounds, infringes without due process of law the liberty guaranteed by the Fourteenth Amendment."

After discussing the legitimate right of the propagation of belief as held in Cantwell *v.* Connecticut, supra, the court continued:

"But the manifold character of man's relations may bring his conception of religious duty into conflict with the secular interests of his fellow-men. When does the constitutional guarantee compel exemption from doing what society thinks necessary for the promotion of some great common end, or from a penalty for conduct which appears dangerous to the general good? To state the problem is to recall the truth that no single principle can answer all of life's complexities. The right to freedom of religious belief, however dissident and however obnoxious to the cherished beliefs of others—even of a majority—is itself the denial of an absolute. But to affirm that the freedom to follow conscience has itself no limits in the life of a society would deny that very plurality of principles which, as a matter of history, underlies protection of religious toleration.

* * *

"* * * The religious liberty which the Constitution protects has never exeluded legislation of general scope not directed against doctrinal loyalties of particular sects. Judicial nullification of legislation cannot be justified by attributing to the framers of the Bill of Rights views for which there is no historic warrant. Conscientious scruples have not, in the course of the long struggle for religious toleration, relieved the individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs. The mere possession of religious convictions which contradict the relevant concerns of a political society does not relieve the citizen from the discharge of political responsibilities. The necessity for this adjustment has again and again been recognized. In a number of situations the exertion of political authority has been sustained, while basic considerations of religious freedom have been left inviolate. (Citing cases) In all these cases the general laws in question, upheld in their application to those who refused obedience from religious conviction, were manifestations of specific powers of government deemed by the legislature essential to secure and maintain that orderly, tranquil, and free society without which religious toleration itself is unattainable. * * *"

It is true that Mr. Justice Stone dissented, but his dissent was apparently based on the theory that requiring an affirmative act of saluting the flag was a compulsory expression of a belief which did not coincide with the true belief of the individual and, indeed, violated his religious conviction and was not of sufficient importance to justify the exercise of the police power of the state. In the present case, defendant is not required to refrain from expressing his religious convictions either orally or by the means of printed literature. He is not required to affirm his belief in anything which contradicts these convictions. He is required merely to refrain from *selling* this literature without paying the regular license tax required of all other persons who peddle literature of any nature within the city of Casa Grande. We might well call defendant's attention to the language of the Master regarding the tribute money. Matt. 22:15-21.

Probably the latest and best statement of the general rule to be applied in cases of this kind is found in City of Manchester *v.* Leiby, 117 Fed. (2d) 661, in the following language:

"* * * The civil authority can never concede the extreme claim that police regulations of general application not directed against any sect or creed—however widely the regulations may be accepted as being reasonable and proper—are constitutionally inapplicable to persons who sincerely believe the observance of them to be 'an insult to Almighty God.' (Citing case)"

We are told in the Scripture that salvation is free. Rev. 21:6; Rev. 22:17. So long as defendant seeks to inculcate his ideas of the proper pathway of salvation "without money and without price", he will not violate the ordinance in question. If, however, he insists upon the right to commercialize his propaganda, he must comply with the law or pay the penalty, and this in no way violates the state or federal constitution guaranteeing the free exercise of religion.

If the defendant still feels that he faces a painful conflict between the call of conscience and man made law, he might read the Apologia and Crito and he would find how one of the wisest of mankind, resolved the difficulty in a way which has stood the test of the moral judgment of mankind for over two thousand years.

The judgment of the superior court of Pinal County is affirmed.

ALFRED C. LOCKWOOD,
Chief Justice.

Concurring:

A. G. MCALISTER, *Judge.*
HENRY D. ROSS, *Judge.*

[October 20, 1941.]

[Citation for above opinion: 118 P. 2d 97.]